

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JOSEPH BREITFELDER,</b>	:	<b>Case No. C-1-01-617</b>
	:	
<b>Plaintiff</b>	:	<b>Judge Beckwith</b>
	:	<b>Magistrate Hogan</b>
<b>vs.</b>	:	
	:	
<b>HAMILTON COUNTY SHERIFF SIMON L. LEIS, JR., et al.</b>	:	<b>COUNTY DEFENDANTS' MOTION</b>
	:	<b>TO STRIKE PLAINTIFF'S</b>
<b>Defendants</b>	:	<b>MEMORANDUM IN OPPOSITION</b>
	:	<b>TO MOTION FOR SUMMARY</b>
	:	<b>JUDGMENT</b>
	:	

Now comes Defendant Simon L. Leis, Jr., Hamilton County Sheriff, John Dowlin, Hamilton County Commissioner, Todd Portune, Hamilton County Commissioner, and Phil Heimlich (successor to Tom Neyer, Jr.), Hamilton County Commissioner, in all capacities sued [hereinafter "County Defendants"], by and through counsel, who pursuant to local Civ Rule 7.2 hereby move this Court to strike the Memorandum In Opposition to Defendants' Motion for Summary Judgment on the basis that it was not timely filed and it exceeds the page limitations of this court as set forth in Civ. R. 7.2.

This motion is supported by the attached Memorandum.

Respectfully submitted,

MICHAEL K. ALLEN  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO

/s/ Stephen K. Shaw, 0018652

Stephen K. Shaw (0018652)

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ATTORNEYS FOR COUNTY DEFENDANTS

### **MEMORANDUM**

Defendant filed its motion for summary judgment on October 31, 2003. Adding three days for service by mail (as required by this Court's CM/ECF filing rules), the plaintiff's memorandum in opposition was due on November 24, 2003. Although plaintiff filed a Memorandum, it was not filed until December 2, 2004 and then was refiled on December 4, 2004 due to some apparent error in filing. Thus, plaintiff's response was more than eight days late. Plaintiff later filed a notice of filing exhibits on or about December 8, 2003. This filing is also not in compliance with the time requirements of Civ. R. 7.2(f).

Civ. R. 7.2(a) states, "(2). . . Any memorandum in opposition **shall** be served and filed within twenty-one (21) days from the date of service...." (Emphasis added). The rule is mandatory. Plaintiff failed to seek leave to file his memorandum out of time and the memorandum should be stricken in light of the mandatory language of the local rule.

Furthermore, Civ. R. 7.2(a) states, "(3)...Memoranda in support of or in opposition to any Motion or application to the Court should not exceed twenty (20) pages. In **all** cases in which memoranda exceed twenty pages, counsel **must** include a combined table of contents and a succinct, clear and accurate summary not to exceed five (5) pages...." (Emphasis added).

Mr. Breitfelder has filed a Memoranda that far exceeds the twenty page limitation and he

has failed to comply with the mandatory requirements of Civ. R. 7.2(a)(3). Therefore, for this additional reason, plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment should be stricken.

#### CONCLUSION

Plaintiff has completely disregarded the mandates of Civ. R. 7.2 and his brief filed in violation of this rule should be stricken by the Court.

Respectfully submitted,

MICHAEL K. ALLEN  
PROSECUTING ATTORNEY  
HAMILTON COUNTY, OHIO

/s/ Stephen K. Shaw

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2003, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Lucian Bernard, Esq.

/s/ Stephen K. Shaw  
Stephen K. Shaw (0018652)  
Assistant Prosecuting Attorney  
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